

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 428 of 1984

in

SPECIAL CIVIL APPLICATION No 1846 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL Sd/-
and

MR.JUSTICE P.B.MAJMUDAR Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? No
 4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

INDUMATI CHANDRAKANT DOSHI

Versus

COMPETENT AUTHORITY AND

Appearance:

MR DU SHAH for Appellants
MR ST MEHTA, AGP for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/12/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

By means of filing this appeal under Clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated August 28, 1984 rendered by the learned Single Judge, in Special Civil Application No. 1846/84, by which validity of order of the Competent Authority and Deputy Collector, Urban Land Ceiling, Rajkot declaring 576.50 sq.mts. of land as excess land as well as notice dated December 16, 1983 issued under section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 calling upon the appellants to handover possession of excess land, are upheld.

2. The appellant no.1 is widow of deceased Chandrakant D.Doshi; whereas appellants no.2 & 3 are sons of the deceased. On coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 ("the Act" for short), appellant no.1 filed Form No.I under section 6(1) of the Act specifying the location, extent, value etc. of lands held by her. The Competent Authority prepared a draft statement proposing to declare land admeasuring 576.50 sq.mts. as excess land. Objections were filed against the draft statement by appellant no.1 and after considering them, the Competent Authority passed an order declaring 576.50 sq.mts. of land as excess land. After service of statement under section 9 of the Act on appellant no.1, the Competent Authority caused a notification to be issued under section 10(1) of the Act. Thereafter a notice dated December 16, 1983 was issued by the Competent Authority under section 10(5) of the Act calling upon appellant no.1 to hand over possession of the surplus land described therein. Thereupon Special Civil Application No. 1846/84 was filed by the appellants challenging order of the Competent Authority by which land admeasuring 576.50 sq.mts. was declared to be excess land as well as notice issued under section 10(5) of the Act, by which appellant no.1 was called upon to hand over possession of the surplus land. The petition was admitted and ad-interim relief restraining the respondents from taking possession of land bearing survey No.81/1, Plot no.29, admeasuring 520.25 sq.mts. situated at Raiya and land bearing survey no.77, Plot No.1, admeasuring 56.25 sq.mts. situated at Nana Mava, was granted. Ultimately, the petition was rejected by the learned Single Judge vide judgment dated August 28, 1984, which has given rise to the present appeal, but ad-interim relief granted earlier was continued for a period of four weeks from the date of judgment to enable

the appellants to have further recourse in accordance with law.

3. Mr. D.U.Shah, learned advocate for the appellants addressed a note dated November 18, 1999 to the Registrar, High Court of Gujarat, Ahmedabad, stating that the appellants are in possession of the land declared to be excess and as the appeal has abated in terms of provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999, the appeal should be placed before the Court for appropriate orders. That is how, office has placed the appeal before us for hearing.

4. We may state that the appeal was initially placed for admission hearing before Division Bench comprising P.S.Poti, CJ (as he then was) and A.S.Qureshi, J. and the Division Bench had issued notice making it returnable on November 19, 1984. Thereafter another Division Bench had admitted the appeal by an order dated January 1, 1987. The appellants had also filed Civil Application No. 3943/84 in Letters Patent Appeal No. 428/84 to restrain the Competent Authority and Deputy Collector, ULC, Rajkot from taking possession of land bearing Survey No. 82/1, plot no.29, admeasuring 520-25 sq.mts. situated at Raiya and land bearing Survey No. 77, Plot No.1, admeasuring 56.25 sq.mts. situated at Nana Mava, pending admission and final disposal of the appeal. In Civil Application the Division Bench had issued notice making it returnable on November 19, 1984 and ad-interim relief of status-quo was granted by an order dated September 24, 1984. The order sheet indicates that status-quo granted on September 24, 1984 is continued till this date.

5. The learned Counsel for the appellants has stated at the Bar that though notice under section 10(5) of the Act was issued by the Competent Authority and Deputy Collector, ULC, Rajkot calling upon appellant no.1 to hand over possession of excess land, possession of the land in question has remained with appellant no.1 althroughout because of interim relief granted by the learned Single Judge during the pendency of petition as well as interim relief granted during the pendency of present appeal. In view of this, the learned Counsel for the appellants has pleaded that the appeal should be disposed of as having abated in view of provisions of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

6. It may be mentioned that the Parliament has enacted The Urban Land (Ceiling and Regulation) Repeal Act, 1999 by which the Urban Land (Ceiling and Regulation) Act, 1976 is repealed. Section 4 of the

repealing Act provides that all proceedings relating to any order made or purported to be made under the repealed Act pending immediately before the commencement of the repealing Act, before any court, tribunal or other authority, shall abate. The proviso to the said Section specifies that section 4 shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the repealed Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the Competent Authority. Neither the record of the petition nor the record of the appeal indicates that after issuance of notice under section 10(5) of the repealed Act, possession of land in question was taken over either by the State Government or by the Competent Authority. The learned Counsel for the respondents has not been able to point out to the Court that after issuance of notice under section 10(5) of the repealed Act, possession of the lands in question was taken over either by the State Government or by the Competent Authority. As possession of the lands in question is not taken over, it will have to be held that the Letters Patent Appeal has abated in terms of provisions of the repealing Act and will have to be disposed of accordingly.

For the foregoing reasons, it is held that the Letters Patent Appeal has abated. We make it clear that we have not pronounced upon the legality or otherwise of the judgment rendered by the learned Single Judge which is impugned in present appeal or the order passed by the Competent Authority declaring 576.50 sq.mts. of land as excess land. However, it is clarified that it will be open to the appellants to make appropriate representation before the Competent Authority that the proceedings should be treated as having abated in view of provisions of the repealing Act. The Letters Patent Appeal is dismissed as having abated, with no orders as to costs. Interim relief granted earlier in Civil Application is hereby vacated.

(patel)